

POSTS AND TELECOMMUNICATIONS CODE

• BOOK II. Telecommunications	1
• TITLE I. General provisions	1
• CHAPTER I: Definitions and principles	1
• CHAPTER II. Legal framework	8
• SECTION I: Networks	8
• SECTION II: Services	14
• SECTION III: Common provisions	17
• SECTION IV: Network access and interconnection	19
• SECTION V: Terminal equipment	20
• SECTION VI: Numbering	21
• CHAPTER III: The public telecommunications service	22
• CHAPTER IV: The regulation of telecommunications	28
• CHAPTER V: Penal provisions	35
• CHAPTER VI: Penal provisions	37
• CHAPTER VII: Penal provisions	38

15/09/03

BOOK II. Telecommunications ➡

TITLE I. General provisions ➡

CHAPTER I: Definitions and principles ➡

Article L32

(Act No 90-1170 of 29 December 1990, Articles 1 and 2, Official Journal of 30 December 1990)

(Act No 96-659 of 26 July 1996, Article 1, Official Journal of 27 July 1996)

(Order No 2001-670 of 25 July 2001, Article 20, Official Journal of 28 July 2001)

1. Telecommunications.

Telecommunications means any form of transmission, emission or reception of signs, signals, text, images, sound or other information, by wire, optical fibre, radio or other electromagnetic means.

2. Telecommunications network.

Telecommunications network means any form of installation or group of installations which ensure either the transmission or the transmission and routing of

telecommunications signals and the associated exchange of the control and operational information, between network termination points.

3. Public network.

Public network means a telecommunications network established or used in order to provide public telecommunications services.

3a) Network terminal points.

Network terminal points means the physical points through which users access a public telecommunications network. These connection points form part of a network.

4. Independent network

Independent network means a telecommunications network intended for private or shared use.

An independent network is referred to as:

- for private use when it is reserved for use by the natural or legal person which established it;
- for shared use when it is reserved for the use of several natural or legal persons forming one or more closed groups of users, with a view to exchanging internal communications within that same group.

5. Internal network.

Internal network means an independent network installed entirely within one premises and not using public property - including radio frequencies - or any third property.

6. Telecommunications service.

Telecommunications service means a service which includes the transmission or routing of signals or a combination of these functions using telecommunications processes. Broadcasting telecommunications services are not subject to this provision insofar as they are governed by the aforementioned Act No 86-1067 of 30 September 1986.

7. Public telephone service.

Public telephone service means the commercial provision to the public of a service conveying direct, real-time voice telephony between public switched telephone networks for fixed and mobile users.

8. Telex service.

Telex service means the commercial provision to the public of a system of direct, real-time typed messages in the form of telegraphic signals, between users connected to the terminal points of a telecommunications network.

9. Interconnection.

Interconnection means reciprocal services provided by two public network operators in order to allow all users to communicate freely amongst themselves, regardless of the networks to which they are connected or the services that they use.

Interconnection also means the network access services provided for the same purpose by a public network operator to a public telephone service provider.

10. Terminal Equipment.

Terminal equipment means equipment intended to be connected directly or indirectly to the termination point of a network in order to send, process or receive information. Equipment intended for access to radio or cable television broadcasting services is not included in this definition, unless such equipment can also be used for access to telecommunications services.

11. Radio network, installation and equipment.

A network, installation or equipment are described as radio when they use radio frequencies to transmit radio waves in an open space. In particular, networks which use satellite capacity are defined as radio networks.

12. Essential Requirements.

Essential requirements means the specifications which must be met, in the public interest, to guarantee people's health and safety, electromagnetic compatibility between telecommunications equipment and installations and, where appropriate, proper use of the radio frequency spectrum avoiding harmful interference to third parties. The essential requirements also entail, in certain cases, the protection of networks and in particular, the exchange of the associated control and operational information, the interoperability of services and of terminal equipment, data protection, environmental protection and consideration of town planning and national and regional development requirements, the compatibility of terminal equipment and radio equipment with fraud-avoidance devices, ensuring access to emergency services and facilitating their use by disabled persons.

Interoperability of terminal equipment means the ability of this equipment to work with the network on the one hand, and with other terminal equipment on the other.

A decree shall lay down the threshold values which must not be exceeded by the electromagnetic fields emitted by the equipment used in telecommunications networks or the installations referred to in Article L. 33-3, where the public is exposed to them.

13. Public operator.

Public operator means a public law legal person whose tasks are laid down in Article 3 of Act No 90-568 of 2 July 1990 on the organisation of the public posts and telecommunications service.

14. Public network.

Public network means the body of telecommunications networks established or used

by the public operator for the needs of the public.

15. Operator.

Operator means any natural or legal person operating a public telecommunications network or providing a telecommunications service to the public.

Article L32-1

(Act No 90-1170 of 29 December 1990, Articles 1 and 2, Official Journal of 30 December 1990)

(Act No 96-659 of 26 July 1996, Article 2, Official Journal of 27 July 1996)

(Order No 2001-670 of 25 July 2001, Article 14, Official Journal of 28 July 2001)

- I. Under the conditions laid down by the provisions of this Code:
 1. telecommunications activities shall be carried out freely, in accordance with the licences and declarations provided for in Chapter II, which shall be granted or verified in an objective, transparent, proportional and non-discriminatory manner;
 2. the public telecommunications service obligations laid down in Chapter III which include, in particular, guaranteeing all persons access to the universal telecommunications service, shall be safeguarded and developed;
 3. the telecommunications sector shall be regulated independently of the operation of networks and the provision of telecommunications services. Regulation shall be administered, on behalf of the Government, by the Minister for Telecommunications and the Telecommunications Regulatory Authority, in accordance with the provisions of Chapter IV.
- II. The Minister for Telecommunications and the Telecommunications Regulatory Authority shall ensure, according to their respective competences:
 1. the provision and financing of all the components of the public telecommunications service;
 2. effective and fair competition among network operators and telecommunications service providers, in the interests of users;
 3. job development, innovation and competitiveness in the telecommunications sector;
 4. public network access and interconnection conditions which guarantee equal market conditions and the possibility of unrestricted communication between users;
 5. compliance by telecommunications operators with the secrecy of correspondence and neutrality with regard to the content of transmitted

messages;

6. compliance of network operators and telecommunications service providers with the obligations incumbent upon them in the interests of national defence and public security;
7. consideration of the interests of users and the territories with regard to access to services and equipment;
8. development of shared use among operators of the installations referred to in Articles L. 47 and L. 48.

Article L32-2

(Act No 90-1170 of 29 December 1990, Articles 1 and 2, Official Journal of 30 December 1990)

(Act No 96-659 of 26 July 1996, Article 3, Official Journal of 27 July 1996)

In accordance with its tasks, laid down in Article 35 of Act No 90-568 of 2 July 1990 on the organisation of the public posts and telecommunications sector, the Commission for the Public Service of Posts and Telecommunications shall contribute to the balanced development of the telecommunications sector. It shall also ensure compliance with public service principles, in particular, with the universal service principles in the telecommunications sector. Besides the opinions, recommendations and suggestions it submits to the Ministry in its sphere of competence, the commission may also be consulted by the Telecommunications Regulatory Authority and by the standing committees of the National Assembly and the Senate, on telecommunications matters which fall within their jurisdiction. It may call on the Telecommunications Regulatory Authority to intervene on issues under its jurisdiction with regard to controlling compliance by operators and penalising operators for non-compliance with the public service and universal service obligations incumbent on them under the legislative and regulatory provisions of this Code and the authorisations which they have been granted.

In this context, it may issue an opinion in particular regarding the conditions and criteria to be applied for licensing the networks and services referred to in Articles L. 33-1, L. 33-2, L. 34-1, L. 34-2, L. 34-3 and L. 34-4 of this Code.

The commission may also propose legislative and regulatory amendments if it considers that these will encourage the technological, economic and social development of the telecommunications industry.

It shall make recommendations to the Government regarding fair competition in the telecommunications sector.

It shall draw up an annual report to be submitted to Parliament and to the Prime Minister. This report shall include a review of the public telecommunications service including a chapter on, in particular, the universal telecommunications service and a chapter covering the progress made in achieving the public interest tasks set out in the third subparagraph of Article L. 35-6. The Commission for the Public Service of Posts and Telecommunications shall draft this report after consulting the annual report of the Telecommunications Regulatory Authority.

Article L32-3

(inserted by Act No 90-1170 of 29 December 1990, Articles 1 and 2, Official Journal of 30 December 1990)

The public operator, persons licensed to establish a public network and telecommunications service providers, as well as their staff, must respect the secrecy of correspondence.

Article L32-3-1

(Act No 2001-1062 of 15 November 2001, Article 29, Official Journal of 16 November 2001)

(Act n° 2003-239 of 18 March 2003, Article 20, Official Journal of 19 March 2003)

- I. Telecommunication operators and in particular those referred to in Article 43-7 of the aforementioned Act No 86-1067 of 30 September 1986, must delete or make anonymous any data regarding a communication as soon as it is completed, subject to the provisions of II, III and IV.
- II. For the requirements of investigating, reporting and bringing proceedings for criminal offences, and with the sole purpose of making information available, as appropriate, to the legal authority, operations which intend to delete or make anonymous certain categories of technical data may be deferred for a maximum of one year. A Conseil d'Etat decree, to be issued following the opinion of the Commission for Information Technology and Civil Liberties, shall lay down, within the limits set out by IV, these categories of data and the length of the conversation, according to the operators' activity and the nature of the communications as well as the payment terms, where appropriate, for the identifiable, specific additional costs of services provided by operators in this regard, at the Government's request.
- III. For the requirements of invoicing and payment of telecommunication services, operators may, until the end of the period during which the invoice may be disputed or proceedings brought to obtain payment, use, retain and, where appropriate, forward to third parties directly concerned with the invoicing or recovery, the categories of technical data which shall be established, within the limits laid down by IV, according to the operators' activity and the nature of the communications, by a Conseil d'Etat decree, to be issued following the opinion of the Commission for Information Technology and Civil Liberties.

Furthermore, operators may process these data in order to market their own telecommunication services for a fixed period of time, if the users expressly consent to this. This time limit may not, in any case, exceed the period of contractual relations between the user and operator. Furthermore, they may retain certain data in order to ensure the safety of their network.
- IV. The data retained and processed under the conditions laid down in II and III shall exclusively concern the identification of the users of services provided by the operators and the technical characteristics of the communications provided by the latter.

The data may in no case concern the content of the correspondence exchanged or information consulted, in any form whatsoever, in the context of these communications.

The retention and processing of these data shall be carried out in accordance with the provisions of Act n° 78-17 of 6 January 1978 on information technology, files and civil liberties.

Operators shall take all measures necessary to avoid the use of these data for purposes other than those provided for in this Article.

Article L32-3-2

(inserted by Act No 2001-1062 of 15 November 2001, Article 29, Official Journal of 16 November 2001)

The limitation period for any claim for a refund of the cost of the telecommunications services provided by the operators referred to in Articles L. 33-1, L. 34-1 and L. 34-2, shall expire after a period of one year as of the day payment was made.

The limitation period for amounts due for payment by users for the telecommunications services of an operator falling within the categories referred to in the above subparagraph where the operator has not claimed them, shall expire after a period of one year as of the date these amounts fell due.

Article L32-3-3

(inserted by Act No 2001-1062 of 15 November 2001, Article 71, Official Journal of 16 November 2001)

The provisions of Articles L. 32-3-1 and L. 32-3-2 shall be applicable in New Caledonia, French Polynesia and in the Wallis and Futuna Islands.

Article L32-4

(Act No 90-1170 of 29 December 1990, Articles 1 and 2, Official Journal of 30 December 1990)

(Act No 96-659 of 26 July 1996, Article 5, Official Journal of 27 July 1996)

In carrying out their tasks, the Minister for Telecommunications and the chairman of the Telecommunications Regulatory Authority may:

1. collect from natural or legal persons which operate telecommunications networks or provide telecommunications services, any information or documents necessary to ensure that said persons comply with the principles laid down in Articles L. 32-1 and L. 32-3, as well as the obligations incumbent on them in accordance with legislative and regulatory texts or arising out of the licence granted to them;
2. conduct inquiries concerning the said persons; they may appoint civil servants authorised to conduct such inquiries under the provisions of Article L. 40.

The Minister for Telecommunications and the chairman of the Telecommunications Regulatory Authority shall ensure that the information gathered in accordance with this Article is not disclosed when said information is protected as confidential under Article 6 of Act No 78-753 of 17 July 1978 laying down various measures to improve relations between

the administration and the public and various administrative, social and fiscal provisions.

Article L32-5

(Act n° 2003-239 of 18 March 2003, Article 72 I, Official Journal of 19 March 2003, in force on 1 January 2004)

The operators who exploit a network of electric radio communication, which is open to the public, must implement the technical schemes destined to prohibit, save urgency phone calls, access to their network or to their communication services transmitted through mobile terminals, which are identified and for which they have received a theft claim.

Nevertheless, the judicial police officer may order the operators, after the consent given by the procurer or the instructing judge, not to apply the provisions of the first paragraph.

NB. Act 2003-239 2003-03-18, Article 72II: These provisions shall take effect for the mainland France on the 1st January 2004. When necessary, the terms and conditions of its application shall be set out by a Conseil d'Etat decree.

Article L32-6

(Act n° 2003-239 of 18 March 2003, Article 126 I 2°, Official Journal of 19 March 2003, in force on 1 January 2004)

The provisions of Articles L32-3-1, L32-3-2 et L32-5 shall apply in New-Caledonia, French Polynesia and the Wallis and Futuna Islands.

CHAPTER II. Legal framework ➡

SECTION I: Networks ➡

Article L33

(Act No 86-1067 of 30 September 1986, Article 82, Official Journal of 1 October 1986)

(Act No 90-1170 of 29 December 1990, Articles 1, 3 and 4, Official Journal of 30 December 1990)

(Act No 96-659 of 26 July 1996, Article 6, Official Journal of 27 July 1996)

Telecommunications networks shall be established under the conditions laid down in this Section.

This Section shall not apply to the following:

1. state installations established in the interests of national defence or public security, or using frequency bands or frequencies allocated by the Prime Minister to an administration for its own requirements, in accordance with Article 21 of Act No 86-1067 of 30 September 1986 on the freedom of communication;
2. the installations referred to in Articles 10 and 34 of the same Act. Installations of this type used for the provision of public telecommunications services shall be subject to

the provisions of this Code governing the operation of public networks, only insofar as they are used to provide telecommunications services.

Article L33-1

(Act No 90-1170 of 29 December 1990, Articles 1, 3 and 4, Official Journal of 30 December 1990)

(Act No 93-1420 of 31 December 1993, Article 1, Official Journal of 1 January 1994)

(Act No 96-659 of 26 July 1996, Article 6, Official Journal of 27 July 1996)

(Order No 2001-670 of 25 July 2001, Articles 8, 21 and 28, Official Journal of 28 July 2001)

(Act n° 2002-1576 of 30 December 2002, Article 16, Official Journal of 31 December 2002, in force on the 1st January 2003)

- I. The establishment and operation of public networks shall be authorised by the Minister responsible for Telecommunication.

Licences may be refused only for purposes of public safety or in the interests of national defence and public security, or as a result of technical constraints due to the availability of frequencies, or when applicants do not have the technical or financial capacity to continually meet the obligations resulting from the conditions under which their activity is carried out, or when they have been the subject of one of the penalties referred to in Articles L. 36-11, L. 39, L. 39-1, L. 39-2 and L. 39-4.

Licences shall be granted subject to compliance with the provisions contained in the contract documents governing the following:

- a. the nature, characteristics, coverage area and extension schedule of the network;
- b. the operating hours, quality and availability of the network and access conditions, particularly for public pay phones;
- c. the conditions of confidentiality and neutrality with regard to the messages transmitted and information concerning the communications;
- d. the standards and specifications of networks and services, particularly European standards when appropriate;
- e. the provisions required for the protection of health and the environment and for national and regional development and town planning objectives, including, where appropriate, conditions governing the occupation of public property and arrangements for the sharing of infrastructures;
- f. provisions required on the grounds of national defence and public security;
- g. the contribution of the operator to research and training in the field of telecommunications;

- h. the use of allocated frequencies, the fees related to this use and the costs of their management and monitoring;
- i. the allocation of numbers or numbering ranges, fees due to cover the management and control costs of the numbering plan, in accordance with the conditions laid down in Article L. 34-10;
- j. universal service obligations incumbent on the licence holder in accordance with Articles L. 35-2 and L. 35-3, and with regard to the mandatory services laid down in Article L. 35-5;
- k. the provision of the information required in order to establish and manage the directory referred to in Article L. 35-4;
- l. the rights and obligations of the operator with regard to interconnection;
- m. the conditions necessary to ensure fair competition;
- n. the conditions necessary to ensure the equivalent treatment of international operators in accordance with the provisions of III and IV below;
- o. the conditions necessary to ensure the interoperability of services;
- p. the obligations incumbent on operators to allow the Telecommunications Regulatory Authority to inspect their contract documents;
- q. fees payable by the operator for the grant, management and control of licences, within the limits of the administrative costs relating to these practices;
- r. the equality of treatment and provision of information to users, particularly concerning the contractual conditions for the provision of the service, regarding in particular compensation for consumers in the event of a failure to meet the quality requirements specified in (b).

Licences shall be granted for a period of fifteen years. At least two years before the date of expiry of the licence, the Minister shall notify the licence holder of the licence renewal conditions or of the reasons why renewal has been refused. In the event of the establishment or operation of experimental networks, of the modification or adaptation of the licence or when so requested by the applicant, the licence may be granted for a period less than fifteen years; in this case the contract documents shall specify the minimum time within which the licence holder shall be notified of the renewal conditions or the reasons why renewal has been refused.

- A. decree, issued following the opinion of the Commission for the Public Service of Posts and Telecommunications, shall specify which of the clauses set out above must conform with standard clauses of which it shall determine the content.

The provisions of the draft decree relating to the clause referred to in (m) above shall be submitted to the Council on competition for its opinion.

- B. For services of electronic communication using bi-directional satellite dish with a transmission power lower than or equal to 2 watts, the fees of operation and

management of the electric radio frequencies owed by operators of satellite telecommunication networks, which are open to the public, shall be established, at a predetermined price in accordance with the mainland France or regional criteria, by a decree introduced after the opinion of the Telecommunication Regulatory Authority.

- II. An operator with an annual turnover in the telecommunications market exceeding a threshold set by the Ministers responsible for Telecommunication and Economy shall be required to keep separate accounts for the authorised activity.

When the Council on competition considers that operators enjoy a monopoly or dominant position in a sector other than the telecommunication sector, and the infrastructure used for this activity may be physically separated, the operators shall be required to give a separate legal status to this activity which is different from their other telecommunications activities for the purposes of fair competition.

Operators registered on the list established in accordance with subparagraph 7 of Article L. 36-7 under a given geographical area and which hold, in the same area, exclusive rights or which benefit from special rights in order to operate networks providing radio and television broadcasting services via cable, must operate the latter activity as a separate legal personality.

- III. Subject to international agreements signed by France which contain a reciprocity clause applicable to the telecommunication sector, the licence referred to in this Article, when relating to a network using radio frequencies, may not be granted to a company in which more than 20% of the share capital or the voting rights are held, either directly or indirectly, by foreign nationals.

Likewise, a foreign national may not make any transaction which increases, directly or indirectly, the share held by foreign nationals in a licensed company to more than 20% of the share capital or the voting rights at the annual general meeting.

For the purposes of this Article, a foreign national means any natural person of foreign nationality or any company the majority of shares of which is not held, directly or indirectly, by natural or legal persons of French nationality.

The provisions of this paragraph shall not apply to natural or legal persons who are nationals of a Member State of the European Union or a State party to the Agreement on the European Economic Area.

- IV. Subject to international agreements signed by France, the Minister responsible for Telecommunication and the Telecommunication Regulatory Authority shall ensure that operators licensed to route international traffic to and from networks, which are open to the French public, receive equal treatment, particularly in relation to interconnection conditions to the French and foreign networks to which they request access.

Subject to the same reservation, they shall also ensure that the rights conferred by operators in non-Member States of the European Union on operators licensed in accordance with this Article and Article L. 34-1, are comparable with the rights they enjoy on national territory, particularly with regard to interconnection, in accordance with this Code.

- V. The number of licences may be limited owing to technical restrictions arising from the limited availability of frequencies.

In this event, the Minister responsible for Telecommunication shall lay down the terms and conditions for the grant of licenses, following the proposal of the Telecommunication Regulatory Authority.

All cases of frequency allocation shall provide for conditions of effective competition.

Article L33-2

(Act No 90-1170 of 29 December 1990, Articles 1, 3 and 4, Official Journal of 30 December 1990)

(Act No 96-659 of 26 July 1996, Article 6, Official Journal of 27 July 1996)

(Order No 2001-670 of 25 July 2001, Articles 8 and 9, Official Journal of 28 July 2001)

The establishment of independent networks, other than those referred to in Article L. 33-3, shall be authorised by the Telecommunications Regulatory Authority.

A decree, issued following the opinion of the Commission for the Public Service of Posts and Telecommunications, shall lay down the general conditions for the establishment and operation of these networks with regard to the essential requirements, provisions concerning public security and defence and the terms governing the installation of the network which must be complied with by operators. It shall also specify the conditions under which the latter, together with those referred to in Article L. 33-3, may be connected to a public network, without allowing the exchange of communications between persons other than those for whom use of the network is reserved.

A licence may only be refused in the event of non-conformity with one of the general requirements for the establishment of networks laid down in the decree referred to in the previous subparagraph, or with one of the establishment requirements laid down by the Telecommunications Regulatory Authority in accordance with the provisions of Article L. 36-6. Failing an express decision within the period laid down by the decree referred to in the previous subparagraph, and only in the case referred to in the following subparagraph, the license shall be deemed to be acquired.

When the licences concern networks which use radio frequencies allocated to their operators, the licences must be express. They shall be accompanied by contract documents concerning the provisions referred to in Article L. 33-1(l)(h), which shall specify the obligations incumbent on the licence holders, in accordance with the decree provided for in the second subparagraph of this Article.

Operators of independent networks may not render them public networks without prior authorisation issued under the conditions laid down in Article L. 33-1. In the event of a breach of these conditions, the operators may be penalised in accordance with the provisions of Articles L. 36-11 and L. 39.

Operators shall pay the fees payable for the grant, management and control of licences, within the limits of the administrative costs relating to these practices.

Article L33-3

(Act No 90-1170 of 29 December 1990, Articles 1, 3 and 4, Official Journal of 30 December 1990)

(Act No 96-659 of 26 July 1996, Article 6, Official Journal of 27 July 1996)

(Act No 2001-624 of 17 July 2001, Article 26, Official Journal of 18 July 2001)

(Act n° 2002-1138 of 9 September 2002, Article 47, Official Journal of 10 September 2002)

The following may be set up freely, provided they conform with the provisions of this Code:

1. internal networks;
2. pay phones not on the public highway;
3. local independent networks, other than radio networks, of a length less than a maximum distance laid down by the Minister responsible for Telecommunications;
4. low power, short-range radio installations whose categories are determined jointly by the Minister responsible for Telecommunications, the Minister of Defence and the Ministry of the Interior;
5. radio installations which do not use frequencies specifically allocated to their users;
6. radio installations which may make in-operational in theatre, for emission and for reception, mobile phones of any type. A theatre may be defined as any place whose specific adjustment is designed to perform a representation or to diffuse to a public a work of spirit.
7. radio installations which may make in-operational in prisons, for emission and reception, mobile telecommunication instruments of any type.

The operating conditions for the aforementioned radio installations are laid down with the exception of those provided in 7°, shall be determined in accordance with the conditions provided for in Article L36-6.

Article L33-4

(Act No 90-1170 of 29 December 1990, Articles 1, 3 and 4, Official Journal of 30 December 1990)

(Act No 96-659 of 26 July 1996, Article 6, Official Journal of 27 July 1996)

(Order No 2001-670 of 25 July 2001, Article 17, Official Journal of 28 July 2001)

The publication of telecommunications network or service subscriber or user lists shall be unrestricted, subject to the protection of the rights of the persons concerned.

The protected rights shall include the right of all persons to appear in the published subscriber or user lists or, at their request, not to appear, to oppose the inclusion of their full home address in these lists, to prohibit personal information relating to them to be used for commercial operations, and the power to obtain said personal information and to demand that it be corrected, completed, clarified, updated or deleted, under the conditions laid down in Articles 35 and 36 of Act No 78-17 of 6 January 1978 on information technology, files and

civil liberties.

For all requests made to publish a universal directory or to provide a universal information service, even where this is restricted to a specific geographical area, operators must supply, in a non-discriminatory manner and at a price reflecting the costs of the service rendered, the list of all the subscribers or users to whom they have assigned, directly or through a distributor, one or more numbers from the national numbering plan as laid down in Article L. 34-10. A Conseil d'Etat decree, issued following the opinion of the Commission for the Public Service of Posts and Telecommunications, shall specify the terms of application of this subparagraph.

Disputes regarding the technical and financial conditions of the provision of the subscriber lists provided for in the above subparagraph may be referred to the Telecommunications Regulatory Authority in accordance with Article L. 36-8.

Article L33-4-1

(inserted by Order No 2001-670 of 25 July 2001, Article 16, Official Journal of 28 July 2001)

It is prohibited to directly canvass, using automatic calling machines or fax machines, telecommunications network subscribers or users who have not consented to receiving such calls.

Operators or their distributors shall provide free of charge to those subscribers or users who so wish, the means to give their consent to receiving the calls referred to in the above subparagraph. They shall make available to any person who so requests, the list of these subscribers or users.

SECTION II: Services ➡

Article L34

(Act No 90-1170 of 29 December 1990, Articles 1, 3 and 5, Official Journal of 30 December 1990)

(Act No 96-659 of 26 July 1996, Article 6, Official Journal of 27 July 1996)

This Section shall apply to the provision of public telecommunications services.

Article L34-1

(Act No 84-939 of 23 October 1984, Article 6, Official Journal of 25 October 1984)

(Act No 86-1067 of 30 September 1986, Article 110, Official Journal of 1 October 1986)

(Act No 90-1170 of 29 December 1990, Articles 1, 3 and 5, Official Journal of 30 December 1990)

(Act No 96-659 of 26 July 1996, Article 6, Official Journal of 27 July 1996)

(Order No 2001-670 of 25 July 2001, Article 18, Official Journal of 28 July 2001)

The provision of a public telephone service shall be authorised by the Minister for Telecommunications.

Licences may only be refused on the grounds of public policy or in the interests of national defence and public security, or when applicants do not have the technical or financial capacity to sustainably meet their obligations resulting from the conditions under which their activity is carried out, or when they have received one of the penalties referred to in Articles L. 36-11, L. 39, L. 39-1, L. 39-2 and L. 39-4.

Licenses shall be subject to compliance with the provisions contained in the contract documents concerning the points referred to in Article L. 33-1(I), with the exception of e) and h).

When the provision of a service presupposes the establishment of a public network, the licence granted in accordance with Article L. 33-1 shall authorise the provision of the service.

The Telecommunications Regulatory Authority may, under the conditions laid down in Article L. 36-11, demand that operators modify their refund or compensation terms or the contractual conditions under which they provides the public telephone service, where these terms or conditions do not comply with the provisions of Article L. 33-1(I)(r).

Article L34-1-1

(inserted by Order No 2001-670 of 25 July 2001, Article 18, Official Journal of 28 July 2001)

Without prejudice to the provisions of Article L. 35-2, operators registered on the list in accordance with Article L. 36-7(7) shall:

1. set the public telephone service charges so that they reflect the corresponding costs. These charges shall be applied regardless of the use of the service made by the users. They shall be sufficiently detailed so that users are not compelled to pay for facilities which are not necessary for the provision of the service requested. Operators shall make the public aware of these charges and any amendments to them at least eight days before the date they are put into effect;
2. publish and apply in a non-discriminatory manner all tariff reduction formulas. The Telecommunications Regulatory Authority may, under the conditions laid down in Article L. 36-11, demand that an operator amend or withdraw reduction formulas should they not comply with the provisions of this Article;
3. possess an information system and keep accounts of services and activities which allow, in particular, compliance with the obligations laid down in 1) to be verified. These accounts shall be audited periodically, at the operators' expense, by an independent body approved by the Telecommunications Regulatory Authority. The results of the audit shall be notified to the Telecommunications Regulatory Authority and to the Minister for Telecommunications. The approved body shall issue a certificate of conformity drawn up in accordance with these provisions each year;
4. offer advanced voice telephony services, the content of which shall be determined by a ministerial order;
5. comply with the quality obligations established, where appropriate, by a ministerial

order, and, where quality indicators have been laid down by a ministerial order, they shall record the values which result from the application of these indicators. The Minister for Telecommunications and the Telecommunications Regulatory Authority shall be notified of the recorded values, at their request. The latter may request verification of these data by an independent body.

Article L34-2

(Act No 90-1170 of 29 December 1990, Articles 1, 3 and 5, Official Journal of 30 December 1990)

(Act No 96-659 of 26 July 1996, Article 6, Official Journal of 27 July 1996)

(Order No 2001-670 of 25 July 2001, Article 22, Official Journal of 28 July 2001)

The provision of public telecommunications services other than the telephone service shall be unrestricted, provided that the essential requirements and national defence and public security requirements are complied with.

However, these services shall be subject to a licence in the cases referred to in Article L. 34-3, and a declaration for the services referred to in the first subparagraph of Article L. 34-4.

A Conseil d'Etat decree shall lay down the content of the declaration and the license application and shall set out the necessary specifications in order to comply with the essential requirements.

Article L34-2-1

(inserted by Order No 2001-670 of 25 July 2001, Article 15, Official Journal of 28 July 2001)

The Minister for Telecommunications shall designate, among the operators appearing in the list established in accordance with Article L. 36-7(7)(b) or, in the absence of such operators, among the holders of licenses granted in accordance with Article L. 33-1, operators which must offer a leased links service. The Minister shall specify, for each operator, the geographical area where the leased links service must be provided.

A decree shall specify the content of the leased links service and the requirements for the provision of leased links by operators designated in accordance with the above subparagraph.

Article L34-3

(Act No 90-1170 of 29 December 1990, Articles 1, 3 and 5, Official Journal of 30 December 1990)

(Act No 96-659 of 26 July 1996, Article 6, Official Journal of 27 July 1996)

The provision of public telecommunications services using radio frequencies shall be subject to the prior grant of a license by the Minister for Telecommunications under the following conditions:

1. when the provision of the service presupposes the establishment of a new network or changes to a network which has already been licensed, the provisions of Article L. 33-1 shall apply;
2. when the service is provided by a network using radio frequencies allocated by an authority other than the competent telecommunications authority, the grant of a license shall be subordinated to compliance with the provisions referred to in Article L. 33-1(I). This licence shall be granted after the authority which allocates radio frequencies has agreed to the use of the latter. In particular, it must lay down conditions for fair competition between service providers, whichever authority allocates the radio frequencies.

Article L34-4

(Act No 90-1170 of 29 December 1990, Articles 1, 3 and 5, Official Journal of 30 December 1990)

(Act No 96-659 of 26 July 1996, Article 6, Official Journal of 27 July 1996)

The provision of public telecommunications services other than the telephone service, over networks established or operated in accordance with Act No 82-625 of 29 July 1982 on broadcasting and Article 34 of the aforementioned Act No 86-1067 of 30 September 1986, shall be subject to a prior declaration lodged with the Telecommunications Regulatory Authority, after informing the municipality or group of municipalities which established or authorised the establishment of the networks.

The sole aim of this declaration is to enable the Telecommunications Regulatory Authority to ascertain the nature of the service provided and the installations used.

When the service proposed is the public telephone service, the provision of the service shall be subject to the provisions of Article L. 34-1. In this event, the licence shall be granted after consulting the municipalities which established or authorised the establishment of the network.

When the purpose of the proposed service is directly related to the provision of radio and television services broadcast over the network, the provisions of the first subparagraph of Article 34-2 of the aforementioned Act No 86-1067 of 30 September 1986 shall apply.

Agreements in force which contain clauses excluding the provision of telecommunications services over the networks referred to in the first subparagraph above or which impose restrictions of a legal or technical nature, must be brought into conformity with the provisions of this Article by 1 January 1998. With regard to these services, these same agreements shall guarantee the owner of these networks fair remuneration to cover the cost of providing the service and the cost of the investments necessary for this purpose. They shall specify the means of making necessary additional capacity available and the technical conditions regarding the use of these networks. In the event of a dispute, the Telecommunications Regulatory Authority may be called upon under the conditions laid down in Article L. 36-8.

SECTION III: Common provisions ➡

Article L34-5

(Act No 90-1170 of 29 December 1990, Articles 1, 3 and 5, Official Journal of 30 December 1990)

(Act No 96-659 of 26 July 1996, Article 6, Official Journal of 27 July 1996)

Two specialised advisory panels shall be set up by the Minister for Telecommunications and the Telecommunications Regulatory Authority, one in the field of radio networks and services and the other for other networks and services. They shall consist of equal numbers of service providers' representatives, business service users' and individual users' representatives, and qualified persons appointed by the Minister for Telecommunications.

The relevant advisory panel shall be consulted by the Minister for Telecommunications or by the Telecommunications Regulatory Authority on any proposals concerning licensing procedures, or which lay down or modify technical and operating conditions and technical specifications and requirements concerning the services which fall within its field of competence, as well as the requirements relating to interconnection and numbering referred to in Articles L. 34-8 and L. 34-10. The panels' conclusions shall be sent to the Commission for the Public Service of Posts and Telecommunications.

A decree shall determine the composition, the functions and the operating conditions of each of these two advisory panels.

Article L34-6

(Act No 90-1170 of 29 December 1990, Articles 1, 3 and 5, Official Journal of 30 December 1990)

(Act No 96-659 of 26 July 1996, Article 6, Official Journal of 27 July 1996)

Licences granted in accordance with the provisions of Sections 1 and 2 of this Chapter shall be granted exclusively to their holders. They may not be transferred to any other person.

A licence granted in accordance with Articles L. 33-1, L. 34-1 and L. 34-3 shall be published in the Official Journal, together with the contract documents appended thereto, where applicable.

Licence refusals shall be reasoned and notified to the interested parties.

The suspension, reduction of duration or total or partial revocation of a licence shall be determined by the Telecommunications Regulatory Authority under the conditions laid down in Article L. 36-11.

Article L34-7

(Act No 90-1170 of 29 December 1990, Articles 1, 3 and 5, Official Journal of 30 December 1990)

(Act No 96-659 of 26 July 1996, Article 6, Official Journal of 27 July 1996)

Telecommunications infrastructure established on public property or for public service requirements may be used to establish and operate public networks and provide any public telecommunications service, subject to compliance with the provisions of this Code.

SECTION IV: Network access and interconnection ➡

Article L34-8

(Act No 96-659 of 26 July 1996, Article 6, Official Journal of 27 July 1996)

(Order No 2001-670 of 25 July 2001, Article 11, Official Journal of 28 July 2001)

- I. Public network operators shall satisfy requests for interconnection from holders of a license granted in accordance with Articles L. 33-1 and L. 34-1 in an objective, transparent manner.

An interconnection request may not be refused if the request is reasonable on the one hand, with regard to the applicant's requirements and on the other hand, with regard to the operator's capacity to satisfy them. All interconnection refusals by the operator shall be reasoned. The Telecommunications Regulatory Authority may, on a case by case basis, under the conditions laid down in Article L. 36-8, temporarily restrict the obligation laid down in the first subparagraph where the interconnection requested may be substituted by solutions which are in technical and economic terms viable and where the available resources are insufficient to meet the request.

Interconnection shall be a matter for a private law agreement between the two parties involved. This agreement shall set out the technical and financial arrangements for interconnection, in accordance with this Code and with the decisions regarding its implementation. The Telecommunications Regulatory Authority shall be notified of this agreement at its request.

When essential for ensuring fair competition and the interoperability of services, the Telecommunications Regulatory Authority may ask for the agreement to be modified, after consultation with the Council on competition.

A decree shall set out the general conditions, particularly those relating to the essential requirements and the pricing principles which interconnection agreements must satisfy.

- II. The public network operators which appear in the lists established in accordance with Article L. 36-7(7)(a) and (b) must publish the technical and pricing terms of their interconnection service, with the prior approval of the Telecommunications Regulatory Authority and according to the conditions laid down in the contract documents.

The service referred to in the above subparagraph shall contain various conditions designed to meet on the one hand, the interconnection requirements of public network operators and on the other hand, the network access requirements of public telephone service providers, taking into account the rights and obligations of each of these categories of operators. The conditions shall be sufficiently detailed to show the various elements for each category of services.

The aforementioned operators shall have an information system and shall keep accounts of the services and activities which shall permit, in particular, compliance with the obligations laid down in this Article to be verified. These accounts shall be audited periodically, at the operators' expense, by an independent body approved by the Telecommunications Regulatory Authority. These costs shall be integrated into the interconnection service costs. The approved body shall issue a certificate of

conformity drawn up in accordance with this subparagraph on an annual basis.

- III. The interconnection fees of public network operators appearing in the lists drawn up in accordance with Article L. 36-7(7)(a) and (b) and the fees of public mobile telephony network operators appearing in the list drawn up in accordance with Article L. 36-7(7)(d), shall remunerate the actual use of the network for carriage and provision of the service and shall reflect the costs of the service provided.
- IV. Public network operators appearing in the lists drawn up in accordance with Article L. 36-7(7)(a), (b) and (c) shall satisfy requests for interconnection from holders of a license granted in accordance with Articles L. 33-1 and L. 34-1 in an objective, transparent and non-discriminatory manner. The Telecommunications Regulatory Authority shall be notified of agreements for this purpose.

The aforementioned operators shall provide users and suppliers of telecommunications services other than the public telephone service, with access to their network and to audiovisual communication services other than sound or television services broadcast via terrestrial radio relay channels or via satellite, or distributed via cable. They shall also meet justified requests for special access corresponding to unpublished technical and pricing conditions, from service providers and users. The provision of the access referred to in this subparagraph by an operator appearing in the list drawn up in accordance with Article L. 36-7(7) shall give rise to remuneration reflecting the costs of the service provided.

- V. The public network operators appearing in the list drawn up in accordance with Article L. 36-7(7) shall make available the means necessary for their subscribers to access the switched services of all interconnected operators by means of a preselection and override, on a call by call basis, any preselected choice by dialling a short prefix. The Telecommunications Regulatory Authority may impose this obligation on other operators exercising significant influence over a certain market determined by the authority. In this event, it shall take into account the interests of consumers and shall ensure that a disproportionate charge is not imposed on operators and that obstacles to new operators entering the market are not created.
- VI. The Telecommunications Regulatory Authority may, either as a matter of course at any time, or at the request of one of the parties, intervene, in accordance with the provisions of Article L. 36-8, in order to lay down the categories which must be covered by an interconnection agreement or to lay down the specific requirements with which the agreements must comply.

The Telecommunications Regulatory Authority may, either as a matter of course or at the request of one of the parties, set a deadline for the conclusion of the interconnection negotiations.

The provisions of the above two subparagraphs shall also apply to negotiations regarding special access to the public networks of operators appearing in the list drawn up in accordance with Article L. 36-7(7).

SECTION V: Terminal equipment ➡

Article L34-9

(Act No 90-1170 of 29 December 1990, Articles 1, 3 and 6, Official Journal of 30 December 1990)

(Act No 93-1420 of 31 December 1993, Article 2, Official Journal of 1 January 1994)

(Act No 96-659 of 26 July 1996, Article 6, Official Journal of 27 July 1996)

(Order No 2001-670 of 25 July 2001, Article 23, Official Journal of 28 July 2001)

The provision of terminal equipment shall be unrestricted.

Equipment intended for connection to a public network and radio equipment must be assessed for conformity with the essential requirements. The bodies involved, where appropriate, in the conformity assessment procedure shall be designated in order to offer manufacturers a choice and thus ensure their independence in relation to companies providing goods or services in the field of telecommunications.

A Conseil d'Etat decree shall determine:

1. the equipment which shall be exempt from the conformity assessment;
2. the conditions which bodies involved in the conformity assessment procedure must comply with in order to be designated to perform these duties;
3. the conditions under which, where appropriate, the technical specifications for equipment subject to a conformity assessment shall be drawn up and published;
4. which essential requirements shall apply to the equipment in question;
5. the conditions for the placing on the market, commissioning, withdrawal from the market or from service, for restriction or prohibition of the placing on the market or commissioning of radio equipment and terminal equipment, as well, with regard to the latter, the conditions for connection to public networks;
6. the conformity assessment procedure;
7. the conditions under which the equipment holders shall, at their expense, have their equipment assessed for conformity with the provisions of this Article.

Equipment and installations submitted for conformity assessment may only be manufactured for the European Economic Area, imported for release to the market from countries outside the latter, kept in view of sale, marketed, distributed free of charge or in return for payment, connected to a public network or advertised, if they have been issued with a certificate of conformity and comply therewith at all times.

SECTION VI: Numbering ➡

Article L34-10

(inserted by Act No 96-659 of 26 July 1996, Article 6, Official Journal of 27 July 1996)

A national numbering plan shall be established and controlled by the Telecommunications Regulatory Authority. It shall ensure equal and straightforward access for users to the various telecommunications networks and services and the equivalence of numbering

formats.

The Telecommunications Regulatory Authority shall allocate prefixes, individual numbers and numbering ranges to operators in an objective, transparent and non-discriminatory manner, in return for a fee, set by a Conseil d'Etat decree, to cover the management costs of the numbering plan and the control of its use.

The conditions under which these prefixes, individual numbers and numbering ranges may be used shall be specified in operators' contract documents or in the allocation decision notified to them.

The Telecommunications Regulatory Authority shall ensure that the numbers allocated are used effectively. Prefixes, individual numbers or numbering ranges may not be protected by industrial or intellectual property rights. Numbers shall be non-transferrable and may only be transferred with the prior consent of the Telecommunications Regulatory Authority.

As of 1 January 1998, all subscribers who change operator without changing their geographical location may retain their number, subject to the technologies in use and the capacity available. Until 31 December 2000, the cost incurred by the initial operator for the transfer of calls shall be paid by the new operator, which alone is entitled to then bill the subscriber, and no other fee of any kind may be billed to the subscriber by the initial operator in this respect. Operators must lay down the necessary provisions in the interconnection agreements referred to in Article L. 34-8. The provisions of this subparagraph shall not apply to numbers allocated to radio networks when they are used to provide mobile services.

As of 1 January 2001 users may, on request:

- retain their telephone number if they change operator without changing their geographical location;
- obtain a number from their operator which enables them to retain this number in the event of a change of operator or geographical location.

As of the same date, operators must lay down the necessary provisions in their interconnection agreements and offer the corresponding services to their users, under conditions to be approved beforehand by the Telecommunications Regulatory Authority.

Public network subscribers may, on request, oppose the identification of their subscriber number by the called party, insofar as this does not disturb the called party or affect the functioning of the emergency services.

CHAPTER III: The public telecommunications service ➡

Article L35

(Act No 90-568 of 2 July 1990, Article 41, Official Journal of 8 July 1990, in force on 1 January 1991)

(Act No 90-1170 of 29 December 1990, Articles 1, 3 and 7, Official Journal of 30 December 1990)

(Act No 96-659 of 26 July 1996, Article 8, Official Journal of 27 July 1996)

The public telecommunications service shall be provided in accordance with the principles of equality, continuity and adaptability. It shall comprise:

- a. the universal telecommunications service defined, provided and financed under the conditions laid down in Articles L. 35-1 to L. 35-4;
- b. the mandatory telecommunications services provided under the conditions laid down in Article L. 35-5;
- c. telecommunications activities undertaken in the public interest, with regard to national defence and public security, public research and higher education, under the conditions laid down in Article L. 35-6.

Article L35-1

(Act No 84-939 of 23 October 1984, Article 1, Official Journal of 25 October 1984)

(Act No 90-568 of 2 July 1990, Article 41, Official Journal of 8 July 1990, in force on 1 January 1991)

(Act No 90-1170 of 29 December 1990, Articles 1, 3 and 7, Official Journal of 30 December 1990)

(Act No 96-659 of 26 July 1996, Article 8, Official Journal of 27 July 1996)

The universal telecommunications service shall provide the public with a quality telephone service at an affordable price. It shall ensure the routing of telephone calls to and from subscriber points, and the routing of emergency calls free of charge, the provision of an information service and a telephone directory in both printed and electronic form and the provision throughout the territory of public pay phones installed on public property.

It shall be provided under pricing and technical conditions which take into account specific difficulties encountered in accessing the telephone service by certain categories of persons, such as low income users and disabled users. In the event of non-payment of the service, these conditions shall include the maintenance of a limited service enabling debtors to receive calls and to make telephone calls to freephone and emergency services for a period of one year, for debtors seized under Act No 91-650 of 9 July 1991 reforming the civil enforcement procedures, and for debtors partaking in an amicable settlement plan or in the compulsory administration instituted under Act No 89-1010 of 31 December 1989 on the prevention and settlement of difficulties relating to heavily-indebted individuals and families.

Any person who so requests shall obtain a subscription to the telephone service from an operator responsible for the universal service under the conditions provided for by this Code. Landlords or their representatives may not oppose a telephone installation requested by a bona fide occupant or tenant.

Article L35-2

(inserted by Act No 96-659 of 26 July 1996, Article 8, Official Journal of 27 July 1996)

- I. Operators may be given the responsibility of providing the universal service if they agree to provide the service to the whole of the national territory and are capable of doing so.

France Télécom shall be the public operator responsible for the universal service.

The contract documents of an operator responsible for providing the universal service shall be drawn up after consultation with the Commission for the Public Service of Posts and Telecommunications and shall govern the general conditions relating to the provision of this service, and in particular the tariff obligations required on the one hand, to ensure the access of all social categories to the universal service and on the other hand, to avoid discrimination based on geographical location. They shall also lay down the conditions under which the universal service tariffs and quality of service are to be controlled.

- II. The routing of emergency calls free of charge shall be compulsory for all public telephone service providers.

Article L35-3

(Act No 96-659 of 26 July 1996, Article 8, Official Journal of 27 July 1996)

(Order No 2001-670 of 25 July 2001, Article 12, Official Journal of 28 July 2001)

- I. The cost of universal service obligations shall be calculated on the basis of an appropriate cost accounting system managed by the operators. It shall be audited, at their expense, by an independent body designated by the Telecommunications Regulatory Authority.

Assessment of the net costs of the universal service obligations incumbent on operators shall take into account the benefit they enjoy on the market, if any, from these obligations.

- II. The costs attributable to universal service obligations shall be borne by public network operators and public telephone service providers under the following conditions:

1. the net costs of tariff equalisation obligations, corresponding on the one hand to geographical price equalisation obligations and on the other hand to the current unbalanced telephone tariff structure, shall be financed by a charge applied in addition to, and in the same manner as, the interconnection charge referred to in Article L. 34-8, by the operator responsible for the universal service.

This additional charge shall constitute the payment for the universal provision of the network and the telephone service. It shall be calculated in proportion to the telephone traffic volume of the operator requesting interconnection. The Minister for Telecommunications shall lay down the sum payable for interconnection following a proposal by the Telecommunications Regulatory Authority.

In order to encourage the development of mobile communications and the reduction of tariffs for users, and in view of the additional traffic which they entail, mobile communications operators which have national coverage obligations

resulting from their contract documents shall be exempt from the share of the additional fee which relates to the imbalance of the current telephone tariff structure. In return, the operators concerned shall agree to contribute, as of 1 January 2001 to the coverage, by at least one mobile telephone service, of main roads and other major trunk roads and scarcely populated areas not covered by such a service at the date of the submission of the first report referred to in Article L. 35-7. They shall also agree to provide the information and to formulate the proposals necessary to draft this report. At the proposal of the Telecommunications Regulatory Authority, the Minister for Telecommunications shall exclude from this exemption the operators which have not agreed to these commitments before 1 October 1997;

2. a universal telecommunications service fund shall be created. The accounts and finances of the fund shall be administered by the Consignments and Loans Fund in a specific account. The management expenses thus incurred shall be paid out of the fund.

This fund shall be used to finance the net costs of the following universal service obligations: the provision of special tariffs for certain subscriber categories in order to guarantee them access to the service, referred to in subparagraph 2 of Article L. 35-1; the provision of public pay phones throughout the territory; the universal directory and the corresponding information service.

The share of the net costs payable by each operator shall be calculated in proportion to their volume of traffic.

If operators agree to offer the special tariffs, referred to in the second subparagraph of Article L. 35-1, for certain subscriber categories in order to guarantee them access to the telephone service under the conditions contained in their contract documents, the net cost of this provision shall be deducted from their contribution.

The net contribution that operators pay or receive shall be decided by the Minister for Telecommunications at the proposal of the Telecommunications Regulatory Authority. These contributions shall be collected by the Consignments and Loans Fund according to this establishment's debt recovery procedure.

In the event that an operator defaults a payment, the Telecommunications Regulatory Authority shall impose one of the penalties laid down in Article L. 36-11. In the event of a repeated default it may withdraw the authorisation. If the payment due is not recovered within a period of one year, it shall be carried over to the fund for payment the following year;

3. the public operator shall gradually rebalance telephone tariffs to correct the imbalance resulting from the current telephone tariff structure before 31 December 2000 through comprehensive tariff reductions for all user categories. When rebalancing has been completed, and by 31 December 2000 at the latest, the additional charge referred to in 1) above shall no longer be applied and the net cost of the geographical price equalisation obligation shall be financed by the fund mentioned in 2) above

The changeover to this new financing system shall be decided by the Minister for Telecommunications, at the proposal of the Telecommunications Regulatory Authority, following the opinion of the Commission for the Public Service of Posts

and Telecommunications.

- III. The methods used to calculate, offset and share the net costs of universal service obligations shall be published at least one year before they are put into practice.
- IV. A Conseil d'Etat decree, issued following the opinion of the Commission for the Public Service of Posts and Telecommunications, shall specify the terms of application of this Article. It shall establish in particular the methods for evaluating, offsetting and sharing the net costs of the universal telecommunications service, as well as the management arrangements for the universal telecommunications service fund.
- V. The Minister for Telecommunications shall submit an annual report to Parliament on the application of the provisions of this Article.

Article L35-4

(Act No 96-659 of 26 July 1996, Article 8, Official Journal of 27 July 1996)

(Order No 2001-670 of 25 July 2001, Article 19, Official Journal of 28 July 2001)

Subject to the protection of personal data, the public shall have access, by means of a universal directory in both printed and electronic form, as well as a universal information service, to the names or business names, telephone numbers and addresses of all public network subscribers, as well as a reference to the profession of the subscribers, when the latter wish to include this. The public may also have access, subject to the same reservation, to the electronic addresses of subscribers who wish to make these available.

Universal directories must comply with the layout terms and technical characteristics laid down by the regulations. Any person who publishes a universal directory or provides a universal information service shall process and present the information supplied for this purpose in a non-discriminatory fashion.

France Télécom shall publish a universal directory in both printed and electronic form, and shall provide a universal information service.

A Conseil d'Etat decree, issued following the opinion of the Commission for the Public Service of Posts and Telecommunications, shall lay down the terms of application of this Article. It shall lay down in particular the guarantees to be made to ensure the confidentiality of information, taking into account the commercial interests of operators and the protection of privacy.

Article L35-5

(Act No 96-659 of 26 July 1996, Article 8, Official Journal of 27 July 1996)

(Act n° 2003-239 of 18 March 2003, Article 8, Official Journal of 19 March 2003)

The mandatory services shall include access, throughout the territory, to the integrated digital network services, to leased lines, to a communication of data in bundle, to advanced vocal telephony services and to the telex service.

The terms and conditions of an operator in charge of universal service shall determine

those of the mandatory services that he shall provide and the conditions of their supply.

France Telecom shall provide all the mandatory services.

Operators of telecommunication services shall allow access to their complete, non expurgated and updated lists of subscribers and users to the judicial authorities, the police, the Gendarmerie as well as to the fire, rescues and emergency medical assistance services, while acting in judicial missions or rescues operations.

Article L35-6

(Act No 96-659 of 26 July 1996, Article 8, Official Journal of 27 July 1996)

(Act No 2000-1353 of 30 December 2000, Article 48, Official Journal of 31 December 2000)

Operators licensed in accordance with Articles L. 33-1 and L. 34-1 shall establish and ensure the availability of the means necessary for interceptions justified in the interests of public security. Provisions declared unconstitutional by Constitutional Council Decision No 2000-441 DC of 28 December 2000.

Provisions declared unconstitutional by Constitutional Council Decision No 2000-441 DC of 28 December 2000.

The services required in the interests of national defence and public security and the guarantees of fair remuneration for these services shall be determined, at the Government's request, by the contract documents of the operators licensed in accordance with Articles L. 33-1 and L. 34-1.

Higher education in the field of telecommunications shall be the responsibility of the State, under the supervision of the Minister for Telecommunications. The State shall assume financial responsibility thereof from the beginning of 1997, under the conditions laid down in the Finance Acts. The resources necessary for high quality higher education shall be made available according to the conditions laid down in the Finance Acts

Public research and development tasks in the field of telecommunications shall be carried out by the State or on behalf of the State under the control of the State within the framework of contracts which lay down the programmes and specify the arrangements for implementing and financing them.

Article L35-7

(inserted by Act No 96-659 of 26 July 1996, Article 8, Official Journal of 27 July 1996)

At least once every four years as of the date of this Act is published, following public consultation, the opinion of the Telecommunications Regulatory Authority and the opinion of the Commission for the Public Service of Posts and Telecommunications, a report on the application of this chapter shall be submitted by the Government to Parliament. This report shall propose, where appropriate, the inclusion of new services within the scope of the universal service and a review of the list of mandatory services or their implementing arrangements, in order to take into account developments in telecommunications technology and services.

The first report submitted in accordance with the above subparagraph shall include a report

on the coverage of the territory by mobile telephone networks. It shall propose the necessary amendments to this Chapter in order to guarantee, in the short term, the coverage of scarcely populated areas, main roads and other major trunk roads, by at least one land or satellite mobile radio telephone service. It shall also specify the means necessary to meet this aim in accordance with the principle of fair competition between operators, particularly the joint investment procedures or a combination of various technologies available in the scarcely populated areas which are not covered at the time the report is submitted.

CHAPTER IV: The regulation of telecommunications ➡

Article L36

(Act No 90-1170 of 29 December 1990, Articles 1, 3 and 7, Official Journal of 30 December 1990)

(Act No 96-659 of 26 July 1996, Article 8, Official Journal of 27 July 1996)

A Telecommunications Regulatory Authority shall be set up as of 1 January 1997.

Article L36-1

(inserted by Act No 96-659 of 26 July 1996, Article 8, Official Journal of 27 July 1996)

The Telecommunications Regulatory Authority shall consist of five members appointed according to their legal, technical and territorial economic expertise for a term of six years. The chairman and two other members shall be appointed by decree. The two other members shall be appointed respectively by the chairman of the National Assembly and by the chairman of the Senate.

One third of the members of the authority appointed by decree shall be renewed every two years.

The members of the authority shall not be revocable.

The Telecommunications Regulatory Authority may only deliberate if at least three of its members are present. It shall decide by majority vote of the members present.

If one of the members of the authority is not able to complete his term of office, the member appointed to replace him shall hold office for the remainder of the term of the person he is replacing.

The chairman of the first Telecommunications Regulatory Authority shall be appointed for six years. The term of office of the two other members appointed by decree shall be determined by drawing lots, one for a term of 4 years and the other for a term of 2 years. The term of office of the two members appointed by the chairmen of the parliamentary assemblies shall be determined by drawing lots, at four years for one and six years for the other.

Members of the authority shall not be reappointed. However, this rule shall not apply to members who have held office for a term not exceeding two years, in accordance with one of the two subparagraphs above.

Persons over sixty-five years of age may not be appointed members of the authority.

Article L36-2

(inserted by Act No 96-659 of 26 July 1996, Article 8, Official Journal of 27 July 1996)

The office of member of the Telecommunications Regulatory Authority shall be incompatible with any other professional activity, any national elected office, any other public position and any direct or indirect interest in a company in the telecommunications, broadcasting or information technology sectors. The members of the Telecommunications Regulatory Authority may not be members of the Commission for the Public Service of Posts and Telecommunications.

The members of the authority shall be bound by professional secrecy with regard to any facts, acts and information they become aware of during the exercise of their functions.

The chairman and the members of the authority shall receive respectively a salary equal to that pertaining to the highest two senior administration grades for civil servants.

Article L36-3

(inserted by Act No 96-659 of 26 July 1996, Article 8, Official Journal of 27 July 1996)

The Telecommunications Regulatory Authority shall have staff placed under the authority of its chairman.

The authority may employ civil servants currently in post, under the same conditions as the Ministry for Telecommunications. It may recruit contractual staff.

The staff employed by the authority shall be bound by professional secrecy with regard to any facts, acts and information they become aware of during the exercise of their functions.

Article L36-4

(inserted by Act No 96-659 of 26 July 1996, Article 8, Official Journal of 27 July 1996)

The resources of the Telecommunications Regulatory Authority shall include payment for services provided, and the taxes and fees payable under the conditions laid down by the Finance Acts or by Conseil d'Etat decree.

During the drafting of the annual Finance Act, the authority shall submit to the Minister for Telecommunications its proposals for the funds needed to perform its tasks, over and above the resources referred to in the first subparagraph.

These funds shall be included in the general State budget. The provisions of the Act of 10 August 1922 on the organisation of the control of expenditure shall not apply to the management thereof.

The chairman of the authority may authorise expenditure. He shall submit the accounts of the Telecommunications Regulatory Authority to the Cour des comptes for auditing.

Article L36-5

(inserted by Act No 96-659 of 26 July 1996, Article 8, Official Journal of 27 July 1996)

The Telecommunications Regulatory Authority shall be consulted with regard to draft Acts, Decrees and Regulations governing the telecommunications sector and shall enforce the application thereof.

At the request of the Minister for Telecommunications, the authority shall assist in the preparation of the French position in international negotiations in the field of telecommunications. At the request of the Minister for Telecommunications, it shall participate in representing France in the international and European Union organisations competent in this field.

Article L36-6

(Act No 96-659 of 26 July 1996, Article 8, Official Journal of 27 July 1996)

(Order No 2001-670 of 25 July 2001, Article 20, Official Journal of 28 July 2001)

In accordance with the principles of this Code and its implementing orders, the Telecommunications Regulatory Authority shall lay down regulations concerning:

1. the rights and obligations connected to the operation of the various categories of networks and services, in accordance with Articles L. 33-1 and L. 34-1;
2. the provisions applicable to the technical and financial conditions regarding interconnection, in accordance with Article L. 34-8;
3. the technical rules applicable, where appropriate, to networks and terminal equipment to ensure interoperability, the portability of terminals and the efficient use of radio frequencies and telephone numbers;
4. the conditions for establishing and operating the networks referred to in Article L. 33-2 and the conditions governing the use of the networks referred to in Article L. 33-3;
5. the determination of network termination points.

Decisions made in accordance with this Article shall be published in the Official Journal, after approval by an order of the Minister for Telecommunications.

Article L36-7

(Act No 96-659 of 26 July 1996, Article 8, Official Journal of 27 July 1996)

(Order No 2001-670 of 25 July 2001, Articles 13 and 24, Official Journal of 28 July 2001, amended in Official Journal of 20 October 2001)

The Telecommunications Regulatory Authority shall:

1. examine, on behalf of the Minister for Telecommunications, the licence applications submitted in accordance with Articles L. 33-1, L. 34-1 and L.34-3; issue the other licences and register the declarations laid down in Chapter II; when licences are

granted following a call for applications, the authority shall publish the report and reasoned outcome of the selection procedure;

2. appoint the bodies that are to participate in the conformity assessment procedure laid down in Article L. 34-9;
3. monitor compliance with the obligations incumbent on operators resulting from the legislative and regulatory provisions applicable thereto under this Code, and from the licences which they have been issued, and penalise any related breach under the conditions laid down in Articles L. 36-10 and L. 36-11;
4. put forward a proposal to the Minister for Telecommunications, according to the principles and methods set out in Article L. 35-3, regarding the amount payable as the contribution to the funding of universal service obligations and supervise the associated financing mechanisms;
5. issue a public opinion on universal service tariffs, multi-annual tariff objectives and tariffs for services for which there are no competitors on the market, prior to their approval, where appropriate, by the Minister for Telecommunications and the Minister for the Economy;
6. allocate to operators and users, in an objective, transparent and non-discriminatory manner, the frequency and numbering resources required for their activity, ensure that they are used efficiently and establish a numbering plan and oversee its management;
7. following the opinion of the Council on competition, draw up an annual list of the operators which are considered to have a significant market power:
 - a. with regard to a market public telephone service between fixed points;
 - b. with regard to a leased links market;
 - c. with regard to a public mobile telephony service;
 - d. with regard to the national interconnection market.

An operator with a share greater than 25% of a particular market shall be deemed to enjoy significant market power. The Telecommunications Regulatory Authority may decide that an operator with a share less than 25% of a market has significant market power or that an operator with a share greater than 25% of a market does not have significant market power. It shall take into account the operators' effective ability to influence market conditions, their turnover relative to the size of the market, their control of the means of access to end-users, their access to financial resources and their experience in providing products and services in the market.

Article L36-8

(Act No 96-659 of 26 July 1996, Article 8, Official Journal of 27 July 1996)

(Order No 2001-670 of 25 July 2001, Articles 14 and 17, Official Journal of 28 July 2001)

- I. In the event of an interconnection refusal, a failure of commercial negotiations or a dispute over the conclusion or execution of an interconnection or telecommunications network access agreement, either party may call on the Telecommunications Regulatory Authority to resolve the dispute.

After giving the parties the opportunity to make their observations, the Telecommunications Regulatory Authority shall issue a decision, within a period laid down by a Conseil d'Etat decree. Its decision shall be reasoned and shall specify the fair technical and financial conditions governing interconnection or special access.

In the event of a serious and immediate breach of the rules governing the telecommunications sector the authority may, having heard the parties in question, take protective measures in particular to guarantee the continuity of network operations.

The authority shall publish its decisions, subject to the confidentiality of decisions protected by the law. It shall notify the parties concerned.

- II. The Telecommunications Regulatory Authority may also be called on to settle disputes concerning:

1. the conditions laid down in the final subparagraph of Article L. 34-4, regarding conformity with arrangements which prohibit or restrict the provision of telecommunications services over the networks referred to in the first subparagraph of said Article;
2. the conditions and possibilities with regard to operators sharing existing installations established on public property, as provided for in Article L. 47 and installations established on private property as provided for in Article L. 48;

The authority shall issue its decisions according to the conditions and procedures laid down in I. Furthermore, it shall publicly consult all the interested parties before any decision is made requiring operators to share installations as referred to in 2).

3. the technical and financial conditions concerning the provisions of the subscriber lists laid down in Article L. 33-4.

- III. Decisions taken by the Telecommunications Regulatory Authority in accordance with I and II may be subject to an action for annulment or judicial review within one month of notification thereof.

The action shall not be suspensive. However, execution of the decision may be deferred, if it is likely to entail manifestly excessive consequences or if new circumstances of exceptional gravity have arisen since notification thereof.

Protective measures taken by the Telecommunications Regulatory Authority may be subject to an action for annulment or judicial review within 10 days of notification thereof. This action shall be heard within one month.

- IV. An appeal lodged against the decisions or protective measures taken by the Telecommunications Regulatory Authority in accordance with this Article, shall fall within the jurisdiction of the cour d'appel of Paris.

An appeal to the highest instance lodged, where necessary, against an order of the cour d'appel shall be made within one month following notification thereof.

Article L36-9

(inserted by Act No 96-659 of 26 July 1996, Article 8, Official Journal of 27 July 1996)

Any natural or legal person, professional organisation, user association or the Minister for Telecommunications may call on the Telecommunications Regulatory Authority to initiate a conciliatory procedure in order to settle a dispute between operators not governed by Article L. 36-8. Conciliation shall be the preferred solution.

The Telecommunications Regulatory Authority shall inform the Council on competition that the conciliation procedure has been initiated and, if the same matter is referred to the Council on competition, the latter may decide to stay judgement.

If conciliation fails, the chairman of the Telecommunications Regulatory Authority shall refer the matter to the Council on competition, if the matter falls within its jurisdiction.

Article L36-10

(inserted by Act No 96-659 of 26 July 1996, Article 8, Official Journal of 27 July 1996)

The chairman of the Telecommunications Regulatory Authority shall refer to the Council on competition any abuse of a dominant position or any anti-competitive practice in the telecommunications sector, which may be brought to his notice. This referral may be made under an urgency procedure, in which case the Council on competition shall be required to deliver a decision within thirty working days from the date of the referral. He may also seek advice from the Council on competition on any other matters falling within its jurisdiction. The Council on competition shall notify the Telecommunications Regulatory Authority of any matters referred to it which lie within the latter's jurisdiction and shall seek the authority's advice on practices which have been referred to it in the telecommunications sector.

The chairman of the Telecommunications Regulatory Authority shall inform the Public Prosecutor of any matters liable to constitute a criminal offence.

Article L36-11

(Act No 96-659 of 26 July 1996, Article 8, Official Journal of 27 July 1996)

(Order No 2001-670 of 25 July 2001, Article 10, Official Journal of 28 July 2001)

The Telecommunications Regulatory Authority may, as a matter of course, or at the request of the Minister for Telecommunications, a professional organisation, an approved user association or a natural or legal person, impose penalties in the event that it establishes a breach by network operators or telecommunications service providers, of legislative or regulatory provisions relating to their activity, or of decisions taken to guarantee the implementation thereof. The power to impose penalties shall be exercised under the

following conditions:

1. when network operators or service providers violate a legislative or regulatory provision relating to their activity, or in respect of which they exercises their activity, the Telecommunications Regulatory Authority shall summon them to remedy the matter within a stipulated period of time. It may make such a summons public.
2. when network operators or service providers do not comply with a decision taken in accordance with Article L. 36-8 or the summons provided for in 1) above within the determined period of time, the Telecommunications Regulatory Authority may impose one of the following penalties:

- a. depending on the gravity of the default, either total or partial suspension of the licence for a maximum of one month, a reduction in the duration of the licence up to one year, or withdrawal of the licence.

With regard to a licence subject to the provisions of Article L. 33-1(III), the licence may be withdrawn without prior summons, in the event of a substantial change in the composition of the share capital;

- b. or, if the default does not constitute a criminal offence, a fine may be levied in proportion to the gravity of the default and to the advantages which it occasions, without exceeding 3% of the net turnover of the preceding financial year, increased to 5% in the case of a repeated default of the same obligation. In the absence of sufficient activity to determine this threshold, the penalty may not exceed one million francs, increased to two and a half million francs in the case of a repeated breach of the same obligation.

The penalties shall be imposed after the operator has received notification of the grounds for complaint and has been given the opportunity to consult the case file and to present written and verbal comments.

Fines shall be recovered as State debts, independently from taxes and public property.

3. matters dating back more than three years may not be referred to the Telecommunications Regulatory Authority if no action has been taken in view of an inquiry, report or penalty;
4. decisions shall be reasoned, notified to the interested party and published in the Official Journal. They may be the subject of a full review or of a request for deferment, submitted in accordance with Article L. 521-1 of the Administrative Justice Code, before the Conseil d'Etat.

A decree shall determine the period of time allowed to operators to regularise their situation, as well as the period of time in which the decisions of the Telecommunications Regulatory Authority shall be taken and notified.

Article L36-12

(inserted by Act No 96-659 of 26 July 1996, Article 8, Official Journal of 27 July 1996)

The chairman of the Telecommunications Regulatory Authority shall have the jurisdiction to bring legal proceedings with regard to the fulfilment of its tasks.

Article L36-13

(inserted by Act No 96-659 of 26 July 1996, Article 8, Official Journal of 27 July 1996)

The Telecommunications Regulatory Authority shall gather the information and carry out the inquiries necessary for the fulfilment of its tasks, within the limits and under the conditions laid down in Article L. 32-4.

Article L36-14

(inserted by Act No 96-659 of 26 July 1996, Article 8, Official Journal of 27 July 1996)

The Telecommunications Regulatory Authority shall draw up and publish an annual public report on the performance of its activity and on the application of the legislative and regulatory telecommunications provisions before 30 June. This report shall be submitted to the Government and to Parliament. It shall also be submitted to the Commission for the Public Service of Posts and Telecommunications. In the report, the Telecommunications Regulatory Authority may suggest legislative or regulatory amendments which appear necessary due to progress in the telecommunications sector and the development of competition.

The authority, and where appropriate, the Commission for the Public Service of Posts and Telecommunications, may be heard by the parliamentary standing committees for the telecommunications sector. The latter may consult the authority on any issue relating to the regulation of the telecommunications sector.

The authority may commission expert assessments, conduct studies, gather data and carry out any action required to obtain information regarding the telecommunications sector. To this end, the operators licensed in accordance with Articles L. 33-1, L. 34-1 or L. 34-3 shall provide statistical information on the use, coverage area and means of access to their service each year.

CHAPTER V: Penal provisions ➡

Article L39

(Act No 84-939 of 23 October 1984, Article 7, Official Journal of 25 October 1984)

(Act No 86-1067 of 30 September 1986, Article 110, Official Journal of 1 October 1986)

(Act No 90-1170 of 29 December 1990, Articles 1 and 9, Official Journal of 30 December 1990)

(Act No 92-1336 of 16 December 1992, Article 322, Official Journal of 23 December 1992, in force on 1 March 1994)

(Act No 96-659 of 26 July 1996, Article 9, Official Journal of 27 July 1996)

Any person found guilty of one of the offences below shall be liable to imprisonment for a

term of six months and to a fine of 500 000 francs:

1. establishing a public network or having a public network established, without the licence laid down in Article L. 33-1, or continuing the operation of such a network in breach of a decision to suspend or withdraw said licence;
2. providing a public telephone service or having a public telephone service provided without the licence laid down in Article L. 34-1 or in breach of a decision to suspend or withdraw said licence.

Article L39-1

(Act No 90-1170 of 29 December 1990, Articles 1 and 9, Official Journal of 30 December 1990)

(Act No 92-1336 of 16 December 1992, Article 322, Official Journal of 23 December 1992, in force on 1 March 1994)

(Act No 96-659 of 26 July 1996, Article 9, Official Journal of 27 July 1996)

(Order No 2001-670 of 25 July 2001, Article 25, Official Journal of 28 July 2001)

Any person found guilty of one of the offences described below shall be liable to imprisonment for a term of six months and to a fine of 30 000 euro:

1. establishing an independent network or having an independent network established, without the licence laid down in Article L. 33-2, or continuing the operation of such a network in breach of a decision to suspend or withdraw the said licence;
2. causing interference to the radio transmissions of a licensed service, by using a radio frequency, equipment or infrastructure, without conforming to the provisions of Article L. 34-9 or without possessing the license laid down in Article L. 89 or without conforming to the general regulatory conditions set out in Article L. 33-3, without prejudice to the application of Article 78 of Act No 86-1067 of 30 September 1986 on freedom of communication;
3. using a radio frequency, equipment or infrastructure, without conforming to the provisions of Article L. 34-9 or without possessing the license laid down in Article L. 89 or without conforming to the general regulatory conditions set out in Article L. 33-3.

Article L39-2

(Act No 90-1170 of 29 December 1990, Articles 1 and 9, Official Journal of 30 December 1990)

(Act No 92-1336 of 16 December 1992, Article 322, Official Journal of 23 December 1992, in force on 1 March 1994)

(Act No 96-659 of 26 July 1996, Article 9, Official Journal of 27 July 1996)

Any person who contravenes the provisions of the second subparagraph of Article L. 33-1(III) shall be liable to a fine of one million francs.

Article L39-2-1

(Act n° 2003-239 of 18 March 2003, Article 126 I 3°, Official Journal of 19 March 2003)

The provisions of the second paragraph of Article L39-2 shall apply in new Caledonia, French Polynesia and in Willis and Futuna Islands.

The amount of the fine provided for in these provisions is equivalent to its exchange value in local currency.

CHAPTER VI: Penal provisions ➡

Article L39-3

(Act No 90-1170 of 29 December 1990, Articles 1 and 9, Official Journal of 30 December 1990)

(Act No 92-1336 of 16 December 1992, Article 322, Official Journal of 23 December 1992, in force on 1 March 1994)

(Act No 96-659 of 26 July 1996, Article 9, Official Journal of 27 July 1996)

(Act No 2001-1062 of 15 November 2001, Article 29, Official Journal of 16 November 2001)

- I. Telecommunications operators or their agents found guilty of one of the offences described below shall be liable to imprisonment for a term of one year and to a fine of 75 000 euro:
 1. to fail to carry out operations intended to delete or make anonymous data regarding communications in the cases where these operations are required by the law;
 2. to fail to retain technical data under the conditions in which this retention is required by the law.

Natural persons guilty of these offences shall also be prohibited, for a maximum of five years, from exercising the professional activity in connection with which the offences were committed.

- II. Natural persons may be declared criminally liable, under the conditions laid down in Article 121-2 of the Penal Code, for the offences laid down in I.

The penalties incurred by natural persons shall be:

1. a fine, in accordance with the terms laid down by Article 131-38 of the Penal Code;
- 2.

the penalty referred to in 2) of Article 131-9 of the penal Code, for a maximum of five years;

3. the penalty referred to in 9) of Article 131-39 of the penal Code.

The prohibition referred to in 2) of Article 131-9 of the Penal Code shall concern the professional activity in the course of which or in connection with which the offences were committed.

Article L39-3-1

(inserted by Act No 2001-1062 of 15 November 2001, Article 71, Official Journal of 16 November 2001)

The provisions of Article L. 39-3 shall apply to New Caledonia, French Polynesia and to the Wallis and Futuna Islands.

CHAPTER VII: Penal provisions ➡

Article L39-4

(Act No 90-1170 of 29 December 1990, Articles 1 and 9, Official Journal of 30 December 1990)

(Act No 92-1336 of 16 December 1992, Article 322, Official Journal of 23 December 1992, in force on 1 March 1994)

(Act No 96-659 of 26 July 1996, Article 9, Official Journal of 27 July 1996)

Any person who, without valid reason, refuses to supply information or documents or who obstructs an inquiry referred to in Articles L. 32-4 and L. 40 shall be liable to imprisonment for a term of three months or to a fine of 200 000 francs.

Article L39-5

(Act No 90-1170 of 29 December 1990, Articles 1 and 9, Official Journal of 30 December 1990)

(Act No 96-659 of 26 July 1996, Article 9, Official Journal of 27 July 1996)

Should the offence be repeated, the penalties laid down in Articles L. 39 to L. 39-4 may be doubled.

Article L39-6

(Act No 90-1170 of 29 December 1990, Articles 1 and 9, Official Journal of 30 December 1990)

(Act No 96-659 of 26 July 1996, Article 9, Official Journal of 27 July 1996)

In the event of a person being found guilty of one of the offences laid down in Articles L. 39

and L. 39-1, the court may also order the confiscation or the destruction, at the expense of the guilty party, of the materials and installations which form the network or enable the provision of a service and may bar the said party from applying for a licence, for a maximum of two years, in accordance with Articles L.33-1 and L. 34-1.

Article L40

(Act No 90-1170 of 29 December 1990, Articles 1 and 9, Official Journal of 30 December 1990)

(Constitutional Council Decision No 90-281 of 27 December 1990))

(Act No 91-648 of 11 July 1991, Article 1, Official Journal of 13 July 1991)

(Act No 96-659 of 26 July 1996, Article 9, Official Journal of 27 July 1996)

(Order No 2001-670 of 25 July 2001, Article 26, Official Journal of 28 July 2001)

In addition to criminal investigation department officers and officials acting in accordance with the provisions of the Code of Criminal Procedure, civil servants and officials of the telecommunications administration, the Telecommunications Regulatory Authority and the National Frequencies Agency, authorised for this purpose by the Minister for Telecommunications, and sworn in according to the requirements of a Conseil d'Etat decree, may investigate and report the offences referred to in this Title and in accordance with the respective implementing legislation.

The civil servants and officials of the telecommunications administration, the Telecommunications Regulatory Authority and the National Frequencies Agency referred to above shall have access to business premises, property and vehicles used by persons subject to Article L. 32-4, by those manufacturing, importing or distributing the equipment or installations described in Article L. 34-9 or by those using radio frequencies as described in Article L. 89, in order to investigate and establish the offences, demand the surrender of all types of professional documents, make copies of these and gather all the information and evidence required either by summons or at the place of investigation. The civil servants and officials of the telecommunications administration, the Telecommunications Regulatory Authority and the National Frequencies Agency shall have access to these premises only during opening hours if they are open to the public, and, in other cases, only between 8am and 8pm. They shall not have access to premises also used as a domicile by the interested parties.

The civil servants and officials of the telecommunications administration, the Telecommunications Regulatory Authority and the National Frequencies Agency referred to in the second subparagraph above shall give the Public Prosecutor prior notice of the operations to be carried out in order to investigate offences. He may oppose these operations. Reports on the investigation shall be submitted to him within five days following their issue. The interested party shall also be provided with a copy.

The civil servants and officials of the telecommunications administration, the Telecommunications Regulatory Authority and the National Frequencies Agency referred to in the second subparagraph above, may seize the equipment described in Article L. 34-9, in the same locations and under the same conditions as those set out in the same subparagraph, if they hold a judicial licence issued by order of the president of the tribunal de grande instance or by the judge delegated by him with jurisdiction over the area in question.

Requests for the aforementioned judicial licence shall be accompanied by all the information required to justify the seizure of the equipment. Seizure shall be carried out under the authority and control of the aforementioned judge.

An inventory shall immediately be made of the seized equipment. The inventory shall be appended to the report made out on the premises. Originals of the reports and the inventories shall be sent to the judge who ordered the seizure within 5 days.

The president of the tribunal de grande instance or the judge delegated by him may, as a matter of course, order the return of the seized equipment at any time or upon request by the owner of the seized equipment.

Article L40-1

(inserted by Order No 2001-670 of 25 July 2001, Article 26, Official Journal of 28 July 2001)

The officials referred to in the first subparagraph of Article L. 215-1 of the Consumer Code shall be empowered to investigate and report the offences under the provisions of Article L. 34-9 of this Code and in accordance with the respective implementing legislation. To this end, they shall enjoy the powers laid down in Chapters II to VI of Title I of Book II of the Consumer Code.

Article L43

(Act No 77-1468 of 30 December 1977, Article 16, Official Journal of 31 December 1977, in force on 1 January 1978)

(Act No 90-1170 of 29 December 1990, Articles 1 and 9, Official Journal of 30 December 1990)

(Act No 92-1336 of 16 December 1992, Articles 322 and 329, Official Journal of 23 December 1992, in force on 1 March 1994)

(Act No 96-659 of 26 July 1996, Article 9, Official Journal of 27 July 1996)

Any person who knowingly transmits or puts into circulation via radio false or misleading distress signals or calls, shall be liable to imprisonment for a term of one year and/or to a fine of 25 000 francs.

The equipment used by offenders or their accomplices may be seized.

Article L44

(Act No 90-568 of 2 July 1990, Article 41, Official Journal of 8 July 1990, in force on 1 January 1991)

(Act No 90-1170 of 29 December 1990, Articles 1 and 9, Official Journal of 30 December 1990)

(Act No 92-1336 of 16 December 1992, Article 322, Official Journal of 23 December 1992, in force on 1 March 1994)

(Act No 96-659 of 26 July 1996, Article 9, Official Journal of 27 July 1996)

Any person who makes radio transmissions by knowingly using an international series call sign assigned to a State station, a public operator's station or a private station authorised by the Ministry of Posts and Telecommunications, shall be liable to imprisonment for a term of one year.

Article L45

(Act No 90-1170 of 29 December 1990, Articles 1 and 9, Official Journal of 30 December 1990)

(Act No 96-659 of 26 July 1996, Article 9, Official Journal of 27 July 1996)

In the event of conviction for more than one misdemeanour or summary offence provided for by Articles L. 39, L. 39-1, L. 42 and L. 44, by Title IV or by the Penal Code, only the most severe penalty shall be imposed.